

THOMAS C. THOMPSON, JR.,

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Defendants.

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required to dismiss the complaint at any time it is determined to be frivolous, malicious, or if it fails to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2). A complaint is frivolous and warrants dismissal when the claims “lack[] an arguable basis in law or fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir. 1999). Claims lack an arguable basis in law or fact if they contain factual allegations that are fantastic or delusional, or if they are based on legal theories that are indisputably meritless. *Id.* at 327-28; *Brown v. Bargery*, 207 F.3d 863, 866 (6th Cir. 2000); *see also Lawler v. Marshall*, 898 F.2d 1196, 1198-99 (6th Cir. 1990). Although the courts are required to construe *pro se* pleadings liberally, *see Boag v. MacDougall*, 454 U.S. 364, 365 (1982), the courts have no discretion in permitting a plaintiff proceeding *in forma pauperis* to amend his complaint to avoid a *sua sponte* dismissal. *See* 28 U.S.C. § 1915(e)(2)(providing that the district court “*shall* dismiss the case”)(emphasis added); *Benson v. O’Brian*, 179 F.3d 1014, 1016 (6th Cir. 1999).

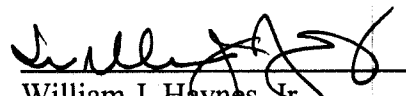
To state a claim under § 1983, Plaintiff must allege and show: 1) that he was deprived of a right secured by the Constitution or laws of the United States; and 2) that the deprivation was caused by a person acting under color of state law. *Flagg Bros. v. Brooks*, 436 U.S. 149, 155-56 (1978); *Black v. Barberton Citizens Hosp.*, 134 F.3d 1265, 1267 (6th Cir. 1998). Both parts of this two-part test must be satisfied to support a claim under § 1983. *See Christy v. Randlett*, 932 F.2d 502, 504 (6th Cir. 1991).

Plaintiff names the Robertson County Sheriff’s Department and the Robertson County Jail as the defendants to this action, but a sheriffs’ department is not a person that can be sued under § 1983. *See Petty v. County of Franklin, Ohio* 478 F.3d 341, 347 (6th Cir. 2007); *Matthews v. Jones*, 35 F.3d 1046, 1049 (6th Cir. 1994); *Timberlake by Timberlake v. Benton*, 786 F.Supp. 676, 682-83

(M.D. Tenn. 1992). A jail also is not a person that can be sued under § 1983, neither is a jail. *Marsden v. Fed. BOP*, 856 F.Supp. 832, 836 (S.D.N.Y.1994); *Powell v. Cook County Jail*, 814 F.Supp. 757, 758 (N.D.Ill.1993); *McCoy v. Chesapeake Corr'l Ctr.*, 788 F.Supp. 890, 893-894 (E.D.Va.1992).

For these reasons, Plaintiff's complaint fails to state a claim for relief.

An appropriate Order is filed herewith.


William J. Haynes, Jr.
United States District Judge

1-27-10